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Date of Decision: 7th October 1995

SPECIAL CIVIL APPLICATION NO. 2867 of 1988

FOR APPROVAL AND SIGNATURE

THE HONOURABLE MR. JUSTICE A.N. DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

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Shri Suresh M. Shah, Advocate, for the Petitioner

Shri Y.M. Thakkar, Asst. Govt. Pleader, for the Respondent  
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CORAM: A.N. DIVECHA, J.  
(Date: 7th October 1995)

ORAL JUDGMENT

The order passed by and on behalf of the State of Gujarat (the respondent herein) on 1st March 1988 under sec. 20(2) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) is under challenge in this petition under Art. 226 of the Constitution of India. By the impugned order, the exemption granted to the petitioner under sec. 20(1) of the Act with respect to certain three parcels of land bearing Survey

Nos. 106 (part), 44 (part) and 45 (part) admeasuring 13,557 square meters, 12,849 square meters and 8701 square meters respectively situated in Rajkot (the disputed lands for convenience) came to be withdrawn.

2. It is not necessary to set out in detail the facts giving rise to this petition. It may be sufficient to note that the petitioner was granted exemption under sec. 20(1) of the Act by the order passed on 20th April 1979 on certain terms and conditions. Such terms and conditions included a condition regarding user of the disputed lands only for agricultural purposes and no construction thereon was permitted. It appears that it came to the notice of the concerned officer of the respondent that the lands remained fallow and some construction was raised therein. A show-cause notice thereupon came to be issued to the petitioner on 13th February 1987 under sec. 20(2) of the Act calling upon the petitioner to show cause why the exemption granted earlier should not be withdrawn. The petitioner made representations on 24th February 1987, 14th May 1987 and 3rd July 1987 thereto. By the order passed on 1st March 1988 under sec. 20(2) of the Act, the respondent withdrew the exemption granted under sec. 20(1) of the Act. Its copy is at Annexure A to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under Art. 226 of the Constitution of India for questioning its correctness.

3. This petition can be disposed of on a short ground of contravention of principles of natural justice. It transpires from the impugned order that one panchnama regarding the disputed lands was got prepared on 5th June 1987. It transpires from the impugned order that such panchnama was relied on by its author for the purpose of coming to the conclusion that the petitioner was guilty of breach of certain conditions attached to the order granting exemption. It is the case of the petitioner that this panchnama was prepared behind his back and no opportunity was given to the petitioner to explain the position of the disputed lands as reflected in the panchnama. The averments made in that regard in para 6 of the petition have not come to be controverted by or on behalf of the respondent in any manner. In that view of the matter, there is no reason not to accept such averments made in para 6 of the petition. In that view of the matter, there is no escape from the conclusion that the panchnama referred to in the impugned order was prepared behind the back of the petitioner and no opportunity was given to him to explain it. This would certainly violate the rule of audi alteram partem enshrined in principles of natural justice.

4. I am supported in my view by the order of this court in Special Civil Application No. 3432 of 1984 decided on 29th

August 1984. In practically identical fact-situation, this court upset the order passed by the State Government on the ground that no opportunity was given to the petitioner to explain the panchnama prepared in the case and referred to in the impugned order. Sitting as a single Judge, the aforesaid order of this court is binding to me.

5. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure A to this petition cannot be sustained in law. It deserves to be quashed and set aside. The matter deserves to be remanded to the respondent for restoration of the proceeding to file and for its fresh decision according to law in the light of this judgment of mine.

6. In the result, this petition is accepted. The order passed by and on behalf of the State Government on 1st March 1988 under sec. 20(2) of the Act is quashed and set aside. The matter is remanded to the respondent for restoration of the proceeding to file and for its fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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